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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,851	08/04/2004	Chuck W. Plevich	H0006239--1060	8250

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EXAMINER

FRISTOE JR, JOHN K

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/813,851

Applicant(s)

PLEVICH ET AL.

Examiner

John K. Fristoe Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 6-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/30/04, 7/25/05</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-5, drawn to a method of repairing a worn regulator valve, classified in class 137, subclass 15.18.
  - II. Claims 6-20), drawn to a regulator valve, classified in class 251, subclass 121.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case replacing both the poppet and the housing could repair the regulator valve.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Paul Amrozowicz on 11/2/2005 a provisional election was made without traverse to prosecute the invention of group I, claims 1-5.

Affirmation of this election must be made by applicant in replying to this Office action. Claims 6-20 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Information Disclosure Statement***

5. The information disclosure statements filed 3/30/2004 and 7/25/2005 are acknowledged by the examiner. However, U.S. Pregrant Publication 2003/020036 listed on the IDS filed 7/25/2005 has not been considered since the examiner could not locate the reference due to a possible typographical error by the Applicants.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 4 recites the limitation NITRONIC in line 2. It is important to recognize that a trademark or trade name is used to identify a source of goods, and not the goods themselves. If a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, then the claim does not comply with the requirements of 35 USC 112, second paragraph (see MPEP 2173.05(u)). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this

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subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Pat. No. 6,634,377 (Stafford). Stafford discloses a method of repairing a worn regulator valve comprising the steps of boring a housing thereby creating a passage (col. 5, lines 50-51), providing a poppet to fit slidably within the passage and wherein the poppet and the housing fit so as to restrict airflow there between (col. 5, lines 58-60), wherein the bore is reamed to be circular and bigger than the worn regulator valve (col. 5, lines 58-60), and wherein the poppet has a first surface (surface of section 28 in figure 3 and the surface of section 34 in figure 3).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 4 as far as it is definite, is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,634,377 (Stafford) in view of U.S. Pat. No. 5,725,007 (Stubbs). Stafford discloses a method of repairing a worn regulator valve comprising the steps of boring a housing thereby creating a passage (col. 5, lines 50-51), providing a poppet to fit slidably within the passage and wherein the poppet and the housing fit so as to restrict airflow there between (col. 5, lines 58-60), wherein the bore is reamed to be circular and bigger than the worn regulator valve (col. 5, lines 58-60), and wherein the poppet has a first surface (surface of section 28 in figure 3 and the surface of section 34 in figure 3) but lacks the poppet being made of stainless steel. Stubbs teaches a valve assembly comprising a poppet (26) made of stainless steel (col. 6, lines

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34-35). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of repairing a worn valve of Stafford by using a poppet made of stainless steel as taught by Stubbs in order for the poppet to resist wear.

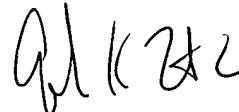
12. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,725,007 (Stubbs) in view of engineering expedient. Stafford discloses a method of repairing a worn regulator valve comprising the steps of boring a housing thereby creating a passage (col. 5, lines 50-51), providing a poppet to fit slidably within the passage and wherein the poppet and the housing fit so as to restrict airflow there between (col. 5, lines 58-60), wherein the bore is reamed to be circular and bigger than the worn regulator valve (col. 5, lines 58-60), wherein the poppet has a first surface (surface of section 28 in figure 3 and the surface of section 34 in figure 3), and a tapered section (32) but lacks the tapered section being at an angle between 6.5 and 7.5 degrees. One of ordinary skill in the art of valve design would manufacture the valve poppet with a tapered section that would regulate the amount of fluid passing through the valve at a rate necessary for the environment the valve is placed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of repairing a worn regulator valve of Stafford by manufacturing the valve having a tapered at an angle between 6.5 and 7.5 degrees as an engineering expedient in order to regulate the flow of fluid through the valve at a certain rate.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John K. Fristoe Jr. whose telephone number is (571) 272-4926. The examiner can normally be reached on Monday-Friday, 7: 00 a.m-4: 30 p.m.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine R. Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John K. Fristoe Jr.  
Examiner  
Art Unit 3751

JKF



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11/6/05